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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/771,699

02/03/2004

Bent David

101124.0001US1

3802

34284

7590

08/31/2004

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EXAMINER

DANG, HUNG XUAN

ART UNIT

PAPER NUMBER

2873

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/771,699	Applicant(s) DAVID, BENT	
	Examiner Hung X Dang	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's election without traverse of Group I claims 1-16 and 18 in the reply filed on 7/19/04 is acknowledged.

Information Disclosure Statement

1. The Information disclosure Statements filed on 5/3/04 has been considered.

Claims Rejection Under 35 USC - 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1,5-9, 11-16 and 18 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by **Wright et al** (6,533,413).

Wright et al discloses neck leash retaining device for eye wear which comprises a frame 12, a pair of lenses formed on the frame, a strap 4 is made of neoprene and formed on the frame and configured to inhibit the glasses from falling off of a wearer a leash (between beads 6 and 8) formed to the strap 4 and a collar formed to the leash (see figures 1 and 4 and the related disclosure.)

It should be noted that although claim 18 is "method claims", the method steps consist of the broad steps of "forming" therefore these steps would be inherently satisfied by the apparatus of the reference as modified.

Claims Rejection Under 35 USC - 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 9-15 and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Lundbeck** (4,978,210).

Lundbeck discloses retainer for eyewear which comprises a frame 12, a pair of lenses formed on the frame, a strap 16 formed on the frame and configured to inhibit the glasses from falling off of a wearer a leash 20 formed to the strap 16 and a collar 24 formed to the leash 20 (see figure 1 and the related disclosure.)

It should be noted that although claim 18 is "method claims", the method steps consist of the broad steps of "forming" therefore these steps would be inherently satisfied by the apparatus of the reference as modified.

Claims Rejection Under 35 USC - 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wright et al** (6,533,413) in view of **Pierotti** (6,343,860).

Wright et al discloses neck leash retaining device for eye wear which comprises a frame 12, a pair of lenses formed on the frame, a strap 4 is made of neoprene and formed on the frame and configured to inhibit the glasses from falling off of a wearer a leash (between beads 6 and 8) formed to the strap 4 and a collar formed to the leash (see figures 1 and 4 and the related disclosure.)

Wright et al does not disclose that the frame made of rubber.

Pierotti, however, discloses that the frame 60 made of soft rubber (see column 5, lines 5-10.)

Because Wright et al and Pierotti are both from the same field of endeavor, the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face as disclosed by Pierotti would have been recognized as an art pertinent art of Wright et al.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Wright et al, with the frame made of soft rubber, such as disclosed by Pierotti for the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face.

Claim Rejections Under 35 USC - 103

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lundbeck** (4,978,210) in view of **Pierotti** (6,343,860).

Lundbeck discloses retainer for eyewear which comprises a frame 12, a pair of lenses formed on the frame, a strap 16 formed on the frame and configured to inhibit the glasses from falling off of a wearer a leash 20 formed to the strap 16 and a collar 24 formed to the leash 20 (see figure 1 and the related disclosure.)

Lundbeck does not disclose that the frame made of rubber.

Pierotti, however, discloses that the frame 60 made of soft rubber (see column 5, lines 5-10.)

Because Lundbeck and Pierotti are both from the same field of endeavor, the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face as disclosed by Pierotti would have been recognized as an art pertinent art of Lundbeck.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Lundbeck, with the frame made of soft rubber, such as disclosed by Pierotti for the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face.

Art Unit: 2873

5. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.

8/04

A handwritten signature in black ink, appearing to read 'Hung Dang', with a stylized, cursive script.

HUNG DANG

PRIMARY EXAMINER

TC 2800